



Regulating and Litigating in the Public Interest

Regulating Food Marketing to Young People Worldwide: Trends and Policy Drivers

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The pressure to regulate the marketing of high-energy, nutrient-poor foods to young people has been mounting in light of concern about rising worldwide levels of overweight and obesity.

In 2004, the World Health Organization called on governments, industry, and civil society to act to reduce unhealthy marketing messages. Since then, important changes have taken place in the global regulatory environment regarding the marketing of food to young people. Industry has developed self-regulatory approaches, civil society has campaigned for statutory restrictions, and governments have dealt with a range of regulatory proposals.

Still, there have been few new regulations that restrict food marketing to young people. Despite calls for evidence-based policy, new regulatory developments appear to have been driven less by evidence than by ethics. (*Am J Public Health*. 2007;97:1962–1973. doi: 10.2105/AJPH.2006.101162)

AS A RESULT OF THE ALARMING rise of overweight and obesity among young people in the

United States and worldwide, the marketing of high-energy, nutrient-poor foods and beverages has become an issue that has generated increasing amounts of public debate. In the United States, the prevalence of overweight and obesity among girls increased from 13.8% to 16.0% between 1999–2000 and 2003–2004 and, among boys, from 14.0% to 18.2%.¹ Similar trends have been experienced in Europe and are emerging in the developing world; 10% of children worldwide are now estimated to be overweight or obese.² Implicated in the trend is a “nutrition transition” to diets high in energy-dense foods, accompanied by lower physical activity.³

Regulation of the marketing of these high-energy, nutrient-poor foods is one of the policy measures most frequently proposed to address overweight and obesity in young people. It is also one of the most controversial. In 2004, the World Health Organization recommended in its Global Strategy on Diet, Physical Activity and Health that governments, industry, and civil society take action to reduce the amount of marketing that encourages

unhealthy dietary practices.⁴ But such proposals remain subject to much debate among these major stakeholders.⁵ Many civil society groups view the marketing of high-energy, nutrient-poor foods as a cause of unhealthy diets, overweight, and obesity, and thus call for statutory restriction to protect young people from these effects.^{6–9} By contrast, industry stakeholders, although they accept advertising to be a “minor factor” in food choices, consider that young people have a right to obtain information from advertising, and thus invoke “responsible” advertising through self-regulation, not statutory regulation.^{10,11} Globally, governments assume a range of perspectives and postures.

I examined how governments and industry—the 2 main players in regulation—have responded to calls to regulate food marketing by developing statutory regulations and self-regulations (Table 1). With regard to industry, I focused only on industry-wide self-regulation, not on voluntary codes developed by individual food companies. Taking a global perspective, I analyzed what has driven recent regulatory developments and examined the role of

the evidence base and the hitherto underanalyzed ethical perspective.

THE EVIDENCE BASE

Proponents of greater statutory restrictions tend to cite 2 sources of evidence in their cause. The first is simply the prevalence of food marketing to young people. Television has been used to market high-energy, nutrient-poor foods to young people in North America, Europe, and Australasia for decades.^{12–14} In the United States, more than US\$10 billion is spent on marketing food to young people every year.¹⁵ Although television remains the most important advertising medium, efforts are now shifting toward marketing in schools and on the Internet. A plethora of other techniques are being used, such as sales promotions, product placement, and event sponsorship, and highly advanced methods such as advergames (the use of video games to advertise a product) and viral marketing (the use of preexisting social networks to promote products).^{6,16–22} The extent and nature of these techniques in the United States were



TABLE 1—Descriptions of 3 Types of Regulations on Marketing Food to Children

Regulation type	Descriptions
Statutory regulation	<p>Texts enshrined in laws or statutes, or rules designed to fill in the details of the broad concepts mandated by legislation</p> <p>Development, promulgation, and enforcement are the responsibility of a government or mandated body</p> <p>Can be used to implement restrictions or prohibitions, including advertising bans, which prohibit the quantity or content of specified forms of advertising through specified media</p>
Government guidelines	<p>Guidelines issued or implemented by a government or mandated body</p> <p>Have no legal backing</p>
Self-regulation	<p>Regulation that is led, funded, and administered by the industries concerned</p> <p>Two basic elements: a code of practice that governs the content of marketing campaigns, and a process for the establishment, review, and application of the code of practice, usually in the form of a “self-regulatory organization” set up by the advertising and media industries, and in many cases involving the companies that use advertising to promote their products or services</p> <p>Usually exists independently of government regulation but may be mandated by government</p> <p>Used only rarely to impose restrictions</p> <p>Self-regulation is sometimes used to refer to voluntary codes developed by individual food companies, but they cannot be described strictly as self-regulation because they usually lack a semi-independent process for the establishment, review, and application of the code of practice</p>

reviewed extensively by the Institute of Medicine of the US National Academy of Sciences in 2006.¹⁵

The food industry also spends millions advertising to young people in Europe (in the United Kingdom, £743 million [approximately \$1.5 billion] was spent advertising food in 2003).⁹ As in the United States, techniques such as marketing in schools and on the Internet are becoming

widespread. The most recent estimates from Australia and New Zealand show that a high proportion of food advertising on children’s television is for products high in fat and sugar.^{23,24}

Less documented but equally widespread is food marketing to young people in developing economies.^{7,25–28} Estimates from Asia suggest that food makes up a significant proportion of child-targeted advertising, ranging

from 25% in South Korea to 70% in Malaysia.²⁷ During the 1990s, domestic advertising expenditure by the 2 leading soft drink and fast food companies in the United States declined but increased elsewhere, indicating their strategic targeting of newer markets.²⁵ With the help of global advertising agencies, the food industry is bringing its international experience of marketing to the developing world, blending it with local knowledge to create successful promotional campaigns.²⁶ In all developing markets, promotional activity is destined to grow given the expansion of media communications, the liberalization of rules on international advertising services, and the increasing number of children’s television channels.

The second—and more scientific—piece of evidence cited by proponents of greater regulation concerns the actual effects of marketing on food choices and diets. This important source of evidence has emerged only recently. In 2006, the Institute of Medicine conducted a systematic review of the relevant literature and found that marketing influences the “preferences and purchase requests of children” (aged 2 to 11 years) and “consumption at least in the short term.”^{15(pviii–6)} They concluded that food and beverage marketing is a “likely contributor to less healthful diets” and that it “may contribute to negative diet-related health outcomes and risks among children and youth.”^{15(pviii–6)} Their report follows an earlier systematic review conducted in the United Kingdom

and published in 2003 that came to the same conclusion:

Food promotion can have and is having an effect on children, particularly in the areas of food preferences, purchase behavior and consumption. It is also clear that these effects are significant, independent of other influences and operate at both brand and category level.^{29(p20)}

The issue of brands and categories is noteworthy because marketing only has an impact if it encourages increased category consumption (e.g., of carbonated soft drinks), rather than just brand switching (e.g., from Coke to Pepsi).

Most of the evidence comes from the United States and Europe, yet a recent review by Hastings et al.³⁰ found that children in developing countries also like food advertising and are interested in trying advertised foods, often convincing their parents to buy products tied to special promotions. In fact, there are reasons to believe that children in developing countries may be more influenced by marketing than are children in developed countries. Children in these countries are less likely to have a sophisticated understanding of modern marketing techniques, and in general, marketing theory states that promotion has a greater effect on category consumption in “unsaturated” markets where there is still unrealized potential.

REGULATORY ACTIVITY

Study Methods

How have governments and industry responded to calls for



regulation amid this mounting evidence base? To help answer this question, a systematic search of government- and industry-led regulations either proposed, developed, or implemented worldwide between April 2004 and April 2006 was conducted. The findings were compared with the results of a previous “benchmark” review completed in March 2004.³¹

The methodology repeated that of the 2004 review, which examined 3 types of regulation: government-led statutory regulation, government guidelines, and industry-led self-regulation (Table 1). Six areas of advertising were covered—television, schools, the Internet, sales promotions, sponsorship, and product placement—in 73 countries (the number of countries for which information about marketing regulations could be verified).

To identify regulatory action since March 2004 in the same 73 countries for the same techniques, we conducted a search of Web sites (those of government agencies, self-regulatory organizations [Table 1], industry and legal information groups, food companies, nongovernmental organizations), the trade press, magazines, newspapers, academic journals, and legal texts (via online databases). Search terms varied depending on context but included “advertising OR marketing OR [name of marketing technique]” AND “regulation OR ban OR prohibition OR restriction” AND “[name of country]” AND “food.” Information was also obtained through personal contact with a wide range of stakeholders, including representatives

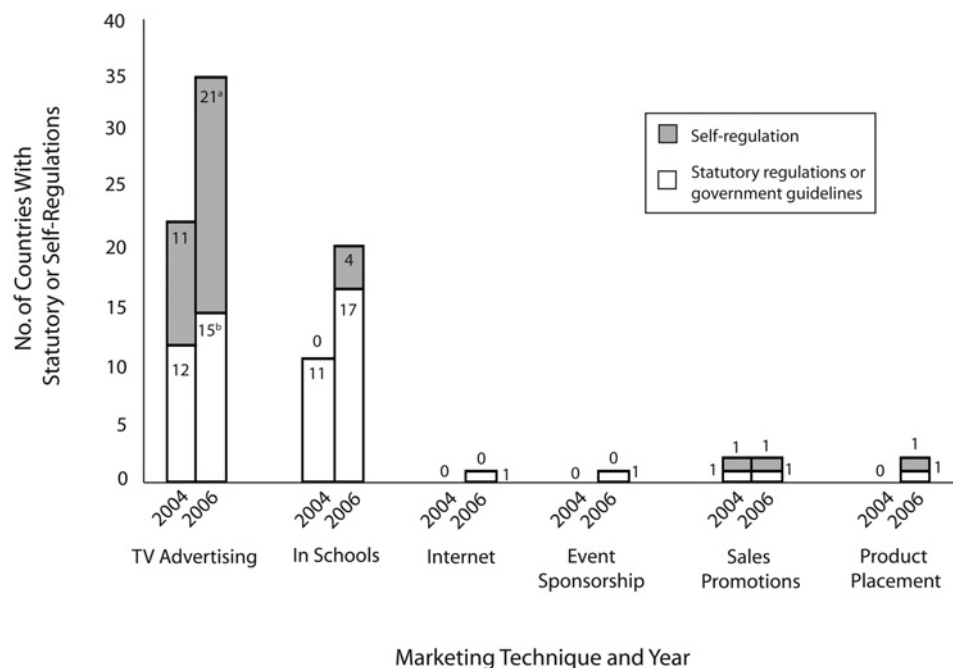
from self-regulatory organizations, nongovernmental organizations, and government agencies, and legal and academic experts. Voluntary codes developed by individual food companies were not reviewed and have been reported and evaluated elsewhere.^{32–35}

Regulatory Activity Between 2004 and 2006

Figure 1 depicts the number of new regulations in April 2006 relative to March 2004; Table 2 and Table 3 exemplify some of the more notable changes that took place. (Further examples are

available as a supplement to the online article at <http://www.ajph.org>.) Three key trends are discernible. First, most new regulations were self-regulations: industry was the most active stakeholder and developed a new, united front in support of self-regulation. The Confederation of the Food and Drink Industries of the European Union and the International Chamber of Commerce published guidelines in 2004 that emphasized that food marketing should not mislead children nor undermine the importance of a healthy diet. In

accordance with these guidelines, self-regulatory codes or clauses on food marketing to young people were developed or revised in 8 countries in Europe. Codes were also revised or extended in Australia, Canada, and albeit later on in 2006, Brazil and the United States. Although this is not a particularly large number of countries, it nevertheless represents a more than 100% increase since March 2004, from 11 to 21 countries in April 2006, to 23 countries by the end of 2006 (Figure 1). (Details of these new regulations are



Source. Figures for 2004 derived from Reference 31; for more details of the new regulations since 2004, see Reference 106.

Notes. Regulations on nutrition and health claims in advertising, or regulation specific to tobacco, alcohol, or child pornography are not included. The 2006 totals include new regulations passed between 2004 and 2006 plus those already in place in 2004.

^aBetween April 2006 and December 2006, 2 more countries developed self-regulations, taking the number from 21 to 23 countries.

^bBetween April 2006 and December 2006, 1 more country developed statutory regulations, taking the number from 15 to 16 countries.

FIGURE 1—Number of countries with statutory regulations and self-regulations specific to food marketing to young people: 2004 and 2006.



TABLE 2—Statutory Restrictions and Government Guidelines on Food Advertising to Young People, by Status: Worldwide, 2004–2006

Country	Code/Law/Proposal (Date) ^{a,b}	Distinct Characteristics	Notes on Development and Implementation
Implemented			
Finland	Consumer Ombudsmen Guidelines on Children and Foodstuffs Marketing (October 2005) ³⁶	Warn marketers to be cautious when packaging free gifts with food products Recommend that collector promotions and sweepstakes are not used to market foods to children	Though not legally binding, guidelines are used by the statutory authorities to guide their interpretation of the Consumer Protection Act and therefore have some legal standing
France	New legislation in Public Health Code—article 29 (2004, implemented February 2007) ³⁷	Requires advertising in all media (targeted at children and adults) for processed foods, and foods or drinks that contain added fats, sweeteners and salt, to be accompanied by a nutritional message Alternatively the advertiser must pay a tax (1.5% of the annual expenditure on that advertisement) to fund nutritional campaigns	Original legal proposal would have prohibited advertising of energy-dense, nutrient-poor foods, but following much debate, amendments led to a less stringent measure
Ireland	Children's Advertising Code of the Broadcasting Commission of Ireland (implemented January 2005) ³⁸	Six provisions on diet and nutrition Includes prohibition on the use of celebrities or sports stars to promote food or drink products	Monitoring during first year of operation identified 1 breach of diet and nutrition provisions in 270 hours of programming ³⁹ Prohibition on use of celebrities strongly opposed by industry during code development
United Kingdom	New statutory regulations released by the communications regulator, Ofcom (implemented April 2007) ⁴²	Advertising of food high in fat, sugar, and salt (as defined by a nutrient profiling model) banned during television programs that have particular appeal to children younger than 16 years old, i.e., preschool children's programs, programs in children's airtime on commercial and public service broadcast channels and all cable and satellite channels, and youth-oriented programming that attracts a significantly higher-than-average proportion of viewers younger than 16 years old	Followed consultation on series of options to limit food television advertising to children ^{40,41} Options costed out to reflect losses to industries and gains for public health Ofcom rejected the more stringent option to prohibit all television advertising of foods high in fats, sugars and salt before 9:00 PM
Draft regulations under discussion			
Brazil	Proposed law that would restrict all forms of food marketing to children (process initiated March 2005; proposed text released for consultation November 2006) ⁴³	Would prohibit child-targeted television and radio advertisements between 6:00 AM and 9:00 PM for foods high in sugar, saturated fat, trans fats and sodium, and drinks low in nutritional value, as well as marketing in the electronic media, films, games, and the Internet, and in educational materials Remaining advertisements would require inclusion of warnings such as "this food is high in saturated fat. Eating excessive saturated fat increases the risk of diabetes and heart disease" in advertisements in all media	Proposal developed by a working group that included consumers and representatives of government, medicine, and industry Though drafted by the sanitation bureau of the health ministry, the regulation would reportedly have statutory power because Brazilian law provides the bureau with the authority to regulate food, although this is subject to debate Consultation closed April 1, 2007, and comments currently being considered
Thailand	Proposal to restrict food advertising to children by health groups ^c —e.g. Health Consumer Protection Project (proposal being tested as of September 2007)	Would limit duration of advertising to 10 minutes per hour, with an additional 2 minutes for promotion of nutrition education, prohibit advertisements from being repeated more than 4 times per hour, ban the use of celebrities and cartoon characters to promote products, and mandate the use of a health warning on advertisements for specific foods	Health groups met with advertising representatives and government officials to discuss prohibiting food advertisements on television in April 2004 and January 2005 ⁴⁴ In August 2007, health groups met with the government agency, Thai National Broadcasting on Radio and Television, to discuss the proposal

Continued



TABLE 2—Continued

		Proposed	
United States	Three federal bills introduced that refer to marketing to children	<p>HeLP America Act would restore the authority of the Federal Trade Commission to regulate food marketing to children (introduced May 2005)⁴⁵</p> <p>The Prevention of Childhood Obesity Act would request the Institute of Medicine to recommend guidelines for marketing practices and authorize the Federal Trade Commission to promulgate regulations to implement these guidelines (introduced in 2005)⁴⁷</p> <p>The Children and Media Research Advancement Act would authorize pilot projects on the role of media exposure on "the development of childhood obesity, particularly as a function of media advertising" (introduced May 2004)⁴⁸</p>	<p>None of the proposals have made progress thus far and face widespread opposition</p> <p>In total in 2006, Congress introduced more than 75 bills aimed at curbing obesity, but only 2 made it past the committee stage⁴⁶</p>

^aExamples of self-regulatory activity on food marketing and statutory regulation not specific to food are available as a supplement to the online version of this article at <http://www.ajph.org>. More information about regulatory activity can be found in reference 106.

^bThe original review identifies regulatory activity from April 2004–April 2006, but regulatory activity up until December 2006 and ongoing discussions that developed in 2007 are included as well.

^cV. Kulsomboon, written communication, associate professor, Chulalongkorn University, Bangkok, Thailand, March 20, 2006, and August 15, 2007.

available as a supplement to the online version of this article at <http://www.ajph.org>.)

In many more countries, self-regulatory organizations began the process of reviewing and developing food codes in accordance with the example set by the Confederation of the Food and Drink Industries of the European Union and the International Chamber of Commerce.

The second defining characteristic was the very slow development of statutory regulation specific to food, despite increasingly loud calls for legislation by civil society. In a range of countries—such as Brazil, Thailand, and the United States (Table 2)—discussions were held, proposals released, bills tabled, and executive orders drafted. But overall, between April 2004 and April 2006, only 3 countries passed or implemented new statutory regulations or government guidelines:

Ireland, France, and Finland (Table 2). None of these new regulations imposed prohibitive restrictions on food marketing to young people. In addition, however, in November 2006, new statutory restrictions were adopted in the United Kingdom to “reduce significantly the exposure of children under 16 to the advertising of food and drink products that are high in fat, salt and sugar.”^{42(p3)} Thus, as depicted in Figure 1, the number of countries with statutory regulations or government guidelines on food marketing to children increased from 12 in March 2004 to 15 in April 2006, and then to 16 by the end of 2006.

A third trend represented the limited development of new restrictions. The proposed law in Brazil would, if implemented, restrict food advertising to children between 6:00 AM and 9:00 PM and require nutritional warnings

on any remaining advertising. Since March 2004, restrictions on some specific advertising techniques have also emerged, notably on advertising that featured celebrities and product placement, and to a lesser extent on sales promotions (Table 2). (Further information is available as a supplement to the online article at <http://www.ajph.org>.) For example, in Ireland, statutory regulations now prohibit celebrities from being used in children’s television advertising, and the new government guidelines in Finland recommend that collector promotions and sweepstakes are not used to market foods to children. A small minority of the new self-regulatory codes also recommend restrictions, such as the unusually comprehensive code implemented in Spain, which prohibits the use of characters or personalities popular with children in food advertising,

as well as in product placement for foods and drinks during television programs targeted at children. The new Dutch code also prohibits celebrities who are well known to children to actively recommend a food product in radio or television advertisements specifically aimed at children. In the United States, the Revised Self-Regulatory Guidelines for Children’s Advertising commit participating companies to abstain from food product placement in editorial and entertainment content and reduce the use of third party—licensed characters in advertising.

Most significantly, since 2004, governments and industry have become more willing to consider restriction of food product sales in schools. Industry associations developed voluntary guidelines for soft drink sales in schools in the United States and Europe, but statutory action was actually

**TABLE 3—Statutory Restrictions and Government Guidelines on Food Product Sales in Schools Worldwide, 2004–2006**

Country	Code/Law/Proposal ^a	Distinct Characteristics	Notes on Development and Implementation
Canada	New government guidelines in 6 provinces (legally nonbinding) ^{49–52,b}	Each defines foods and drinks that can or cannot be sold in schools	Other provinces (out of a total of 10) also discussing implementing restrictions
Brazil	New law in the Federal District (Brasilia) ^c	Prohibits sale of listed nutrient-poor foods	Guidelines are not legally binding, so it is not clear how they will be enforced
Fiji	School Canteen Guidelines ⁵³	Require that foods sold in school canteens and vending machines should follow nutritional standards set by the National Food and Nutrition Centre, effectively prohibiting many high-fat, sweetened foods from schools, including sweetened soft drinks in vending machines	Passage was delayed after lobbying by the industry Guidelines developed by the National Food and Nutrition Centre and the Ministries of Health and Education, in collaboration with the Secretariat of the Pacific Communities and UNICEF in line with the School Nutrition Policy developed in 2006 Will be monitored through regular school visits by the Ministry of Health
France	New legislation in the Public Health Code—article 30 (2004) ³⁷	Prohibits vending machines that sell foods and drinks in schools and colleges	Included in same law as that regulating advertising but subject to less opposition
United Kingdom	Education and Inspections Bill (March 2006; implemented September 2006) ⁵⁴ School healthy eating guidelines issued by the government's advisory body, the School Food Trust—e.g., “Eat Better, Do Better” (June 2006) ⁵⁵	Bill states “all food and drink provided on the premises” of state (public) schools must comply with healthy eating guidelines Healthy eating guidelines issued by School Food Trust prohibit the sale of confectionary, most savory snacks (other than nuts and seeds), and sweetened soft drinks in schools	Efforts have also been made by individual schools and local authorities to improve nutritional quality of school meals
United States	New or revised state laws in 15 states ⁵⁶	Created new or tightened existing legal guidelines on soft drink sales in schools, but tended not to ban soft drinks nor the use of vending machines in schools	Food industry lobbied strongly against the laws Regulations specify what proportion of which soft drinks can be sold in vending machines

Note. UNICEF = United Nations Children's Fund.

^aExamples of self-regulatory activity on food marketing and statutory regulation not specific to food are available as a supplement to the online version of this article at <http://www.ajph.org>. More information about regulatory activity can be found in reference 106.

^bR. Allen, Simcoe Muskoka District Health Unit, and Ontario Society of Nutritional Professionals in Public Health, written communication, March 6, 2006.

^cJ. G. Coutinho, Ministry of Health, Brazil, written communication, October 25, 2005.

more significant, with a total of 6 countries developing laws or guidelines (Table 3). Vending machines that sell foods and drinks were prohibited in schools and colleges in France, and the sale of specific foods was prohibited in schools in the United Kingdom; more-stringent laws on soft drink sales were passed or revised in 15 US states; government school-food guidelines were

implemented in 6 Canadian provinces; a further municipality in Brazil passed a law; and new restrictions were imposed in Fiji. As depicted in Figure 1, this took the total number of countries with statutory restrictions or government guidelines on product sales in schools from 11 in April 2004 to 17 in April 2006, and with self-regulations, from zero to 4.

Between April 2004 and April 2006, important changes took place in the global regulatory environment with regard to the marketing of food to young people. Moreover, activity continues to proliferate. Changes such as the new self-regulations in Brazil and the United States, and the new statutory regulations in the United Kingdom, occurred since April 2006. In May 2006,

the World Health Organization held a consultation on the issue, which concluded that the “[World Health Organization] should support national actions to substantially reduce the volume and impact of commercial promotion of energy-dense, micronutrient-poor food and beverages to children.”^{57(p28)} In September 2006, the International Obesity Task Force released a set



of “Sydney Principles” for reducing the marketing of foods to children.⁵⁸ And in November 2006, European Ministers signed an obesity charter that called for regulatory measures to substantially reduce food marketing, particularly to children.⁵⁹ The latter 3 initiatives called for the development of an international code on food marketing to young people. In October 2006, the International Chamber of Commerce released an updated set of guidelines on food marketing to include all forms of marketing communication.⁶⁰

Throughout Europe, and in countries such as Brazil, India, and Thailand, discussions and consultations continue to be held to move regulatory activity forward. It is also noteworthy that between April 2004 and April 2006, several countries and zones, including the European Union, Israel, Italy, Russia, and the United States, drafted or implemented regulations that in some way restrict marketing to children (albeit not specific to food). (Details of these new and developing regulations are available as a supplement to the online version of this article at <http://www.ajph.org>.)

Even so, despite this marked increase of regulatory activity, from a global perspective there was more talk about developing regulations than there was actual implementation. Overall, the balance in the global regulatory environment did not significantly change. Most regulatory activity focused on self-regulation, and most was located in Europe. With few exceptions, very little action took place in the developing

world. There was relatively little activity on techniques beyond television advertising, although the movement in schools was significant, and in at least 10 countries, new regulations considered techniques such as product placement and Internet marketing (Figure 1). The number of new restrictions was very low, reflecting the slow movement of governments in developing statutory restrictions and the low number of restrictions imposed through self-regulation. Although progress was made in evaluation and monitoring, limited resources were devoted to effective implementation and enforcement.

POLICY DRIVERS

Drivers of Regulatory (In)Activity

With regard to the primary trend of more self-regulation, pressure on industry—from governments, civil society, the World Health Organization, and, perhaps above all, lawsuits—was a key driver. It is well known that industry tends to develop self-regulation as a means of deflecting external regulation.⁶¹ It is thus no surprise that self-regulatory activity was greatest where pressure from government and civil society, and lawsuits were greatest—in European countries, Australia, Brazil, and North America—and least where there was little advocacy—in most developing countries.

That statutory regulation developed so slowly worldwide, despite strong consumer advocacy and the emergence of a stronger evidence base, generally reflects

a multitude of factors. These include a lack of awareness of the issue in developing countries, the increasing tendency of governments to leave regulation to the market, and the often slow process of lawmaking. More specifically, it reflects lobbying by advertising and food industry trade associations, which succeeded in many cases in preventing, watering down, or repealing statutory regulations. In the case of France, the law proposed to prohibit advertising of high-calorie, nutrient-poor foods eventually morphed into a mandate for nutritional messages on food advertising. In Italy, lobbying by the advertising industry succeeded in repealing legislation that restricted the use of children in all advertising. In China, the industry pledged to fight a recent bill tabled to restrict advertising directed at children aged younger than 13 years.^{5,62}

Lawmakers were particularly influenced by 2 arguments made by lobbyists. First, the lobbyists argued that statutory regulation is unnecessary because self-regulation works well to promote “responsible” advertising that meets the “highest standards of truth and accuracy.”^{10,63} Second, they argued that there is insufficient evidence for statutory regulations. It is true that there are 5 key gaps in the evidence. First is the lack of evidence on the strength of marketing’s effects relative to other factors (both systematic reviews were unable to come to a conclusion about whether marketing has a large or small influence on food preferences).^{15,29} Second, although the Institute of Medicine concluded

that there is strong evidence that exposure to television advertising is associated with obesity in young people, there is insufficient evidence to show whether television advertising leads to obesity.¹⁵ Third, and most significantly, despite greater efforts made to monitor regulations from 2004 through 2006 (e.g., in Spain and Ireland; Table 2), there is still no concrete evidence on the effectiveness of regulation in the prevention of unhealthy diets or obesity. Fourth is the lack of evidence on the dietary impact of the plethora of marketing techniques—the vast majority of existing evidence comes from television advertising. And fifth, there are few scientific studies on the effect of marketing in developing countries.³⁰

The Evidence Base as a Policy Driver

Since 2004, both the development of new evidence and the existence of remaining gaps played an important role in shaping the debates about how food marketing to young people should be regulated.⁶⁶ Evidence from the systematic reviews raised the stakes for industry, while the absence of more sophisticated evidence on policy effectiveness slowed developments of statutory restrictions.

Yet, there is little evidence that regulatory activity has reflected the nature of the evidence base. Three observations support this view. First, most new and emerging restrictions focused on schools (as strongly advocated by civil society), and to some extent on celebrity



advertising, product placement, and sales promotions. This does not reflect the greater presence of evidence, because evidence on the effectiveness of these regulations has yet to emerge. There is no systematic review of the impact of these techniques on food choices or obesity, and just 1 study to date, published after the 2004–2006 activity reviewed here, shows that school vending machines are associated with increased consumption of sugar-sweetened beverages.⁶⁵ In fact, if policy followed the evidence from the systematic reviews, restrictions would have been implemented primarily on television advertising, but this was not the case (although television was the subject of most legislative proposals).

Second, self-regulation developed faster than statutory regulation despite the lack of evidence that self-regulation is any more effective at preventing the growth of obesity than is statutory regulation. This, however, did not prevent industry from using “evidence” to make a case against statutory regulation and in favor of self-regulation; they simply used different standards of evidence. On the one hand, they presented statistics showing that obesity has risen in countries in which statutory prohibitions are in place (e.g., Sweden)^{5,30}—as proof that statutory approaches do not work. On the other hand, the industry presented adherence to self-regulatory codes as evidence that self-regulation does work.^{63,66,67} But although adherence to these codes can achieve important aims, it does not prove

that they play a role in preventing obesity.⁶⁸ The argument that statutory restrictions do not work because obesity has risen in countries with existing advertising prohibitions applies equally to self-regulation: obesity prevalence has increased faster in the United States since the introduction of self-regulation of food advertising than any other previous time in history.

Notwithstanding these arguments, no firm conclusions about the effectiveness or ineffectiveness of statutory restrictions or self-regulation can be drawn, because there are no properly controlled studies that examine whether either form of regulation affects obesity (although one rather dated study does assess the impact of the ban in Quebec on food choices⁶⁹). Moreover, as argued by Livingstone, obtaining such proof would require “unrealistic standards of evidence.”⁶⁴ This does not mean that neither statutory regulation and self-regulation are not potentially effective tools. It means that the relatively rapid development of self-regulation compared with statutory regulation is not a reflection of a better evidence base and that obtaining evidence of effectiveness on obesity is very difficult at this stage of regulatory development (as it was for the regulation of tobacco advertising). Overall, arguing about the different standards of evidence has proved more obstructive than constructive in moving policy forward.⁶⁴

Third, although there have been few scientific studies on food marketing in developing

countries, evidence indicates that this is where marketing is likely to have the greatest impact on young people’s food preferences. Yet, this is also where there is the least regulatory activity.

Accordingly, one of the defining characteristics of the regulatory debate between 2004 and 2006 was obfuscation and confusion about evidence. Proponents and detractors of statutory regulation used the evidence base in different ways, proponents citing the presence of evidence—the prevalence of food marketing, the results of the systematic reviews—in their cause, detractors citing the absence of evidence in theirs. Even in the United Kingdom, where regulators made a considerable effort to take account of the “prevailing evidence,” the statutory restrictions subsequently developed were criticized by both civil society and industry on the basis of incorrect use of evidence.^{42,70,71}

Likewise, it emerges that despite debates about evidence, regulatory developments with regard to the marketing of food to children during 2004 through 2006 were not, overall, largely driven by the evidence. Following the typology developed by Lang and Heasman, the result is a mix of policies without evidence, policies that claim to have evidence but do not, and evidence that awaits a policy response.⁷² In this light, it is worth reflecting upon what did stimulate the (modest) development of new restrictions. Arguably, among a multitude of factors, another less tangible driver played a decisive role: ethics.

Ethics as a Policy Driver

The ethical concern that children are particularly vulnerable to being exploited and deceived by marketing is widely accepted in international texts, industry codes, and national regulations. The review of marketing regulations conducted in 2004 showed that the majority of countries had ethical guidelines wherein advertising should not “exploit the credulity of children” or “harm” them.³¹ This widespread acknowledgment that young people need special protection reflects international texts ranging from the United Nations Convention on the Rights of the Child (encourages the “development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being”)^{73(Article 17)} to the International Chamber of Commerce Code of Advertising Practice (“advertisements should not exploit the inexperience or credulity of children and young people”).^{74(Article 14)}

Ethical concerns draw on the quite different evidence base that young people are less capable than are adults of comprehending the meaning of all advertising.^{75,76} They can thus be unduly and unfairly misled by it. Such reasoning calls on the higher, more universal principle that manipulating and exploiting young people against their better interests is unethical. The manifestation of marketing’s role in encouraging young people to make choices against their better interests—healthy diets—seems to have triggered this ethical concern. This principle can be



interpreted in different ways but appears to have paved the way for the development of new regulations on food marketing to children since 2004, particularly with regard to the new restrictions. Alongside pressure from governments and lawsuits, it is also likely to have influenced the more recent development of voluntary commitments by individual food companies to restrict advertising to young children.⁷⁷

The increasing ethical unacceptability of marketing foods associated with obesity is indicated by the increased level of regulatory activity in schools. The principle that children should be protected from being treated as mere commercial objects in places where education is key has gained increasing currency, despite the lack of specific evidence of whether soda in schools is a major or minor contributor to obesity. It is no surprise that proposals to restrict sales of specific foods in schools in France, the United Kingdom, and the United States were more politically acceptable relative to related proposals to restrict television advertising.

The same applies to restrictions on other specific advertising techniques. The use of celebrities in children's food advertising was banned in Ireland despite industry's "fervent"⁷⁸ opposition, because children's "inexperience and credulity" means they "may not possess an understanding regarding the intention of this technique."⁷⁹(pp6–7) In Spain, the prohibition on product placement was "to prevent the exploitation of the special trust that children have

in presenters or fictional characters."⁸⁰(p9) Finland's new government guidelines on food advertising were based on the principle that children are "unusually susceptible to the influences of marketing."³⁶(p5) Although not specific to food, new limits on advertising on digital television in the United States were driven by the need to "protect children" given their "unique vulnerability" as television viewers.⁸¹ In the past, also, concerns about children's lack of understanding of advertising underpinned bans in Sweden and Quebec.^{76,82}

This ethical overtone also goes some way to explain the emphasis on younger age groups perceived as requiring greater protection from exploitation. The evidence suggests that it is children aged younger than 8 to 12 years who do not recognize the persuasive intent of commercial appeals.^{85,86} Existing bans in Sweden and Quebec apply to children aged younger than 12 and 13 years, respectively, and although the United Nations Convention on the Rights of the Child defines children as being aged 18 years or younger, action in schools has been more restrictive for younger than older age groups.

Indeed, despite all the talk about evidence, the debate during 2004–2006 took on an ethical bent in a range of ways. The most recent obesity lawsuits focused on convincing the courts that marketing inherently deceives children, rather than claiming a direct link between marketing and obesity.^{83,84} Many proponents of restrictions

argued that all marketing is inherently exploitive and misleading to children and the existence of these principles in law should be sufficient to restrict food marketing.^{16,19,82} Those against restrictions also based their case on ethical considerations, arguing that self-regulation promotes marketing that is legal, decent, honest, and truthful, and restrictions would (unethically) deny young people's rights to information.^{10,11,83} This reflects the tension between the ethically paternalistic orientation of many public health advocates versus the emphasis on individual responsibility and freedom of choice favored by many industry stakeholders.⁸⁶

Arguably, then, it is only if food marketing becomes viewed as unethical—by exploiting and deceiving young people into buying food products that may harm them—that restrictions will emerge, whatever the evidence base on their effectiveness. This observation is particularly pertinent to the developing country context, where it is likely that food marketing to young people will become even more aggressive as its ethical acceptance weakens in developed economies. It is also relevant to the United States, where government has been reluctant to act in this area for decades. Whereas the US regulator (the Federal Trade Commission) has no authority to regulate marketing to young people based on unfairness, it is able to use the standard of deception.^{15,87}

In this controversial, sometimes nasty, debate, there will continue

to be calls for "more evidence" on all sides to support or resist the development of all forms of regulation. Although emerging evidence will shape perception of the issue, it is more likely that future developments will depend on whether the key stakeholders manage to convince lawmakers and the public that food marketing to young people is either ethically unacceptable (however accurate and truthful it is) or acceptable (provided it is accurate and truthful). The former will lead to greater statutory regulation, the latter to more self-regulation. The next debate will be whether marketing healthier food products to young people—an approach taken by recent voluntary industry initiatives—is an ethically acceptable compromise.⁷⁷ ■

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